

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 13, 2002**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on September 13, 2002. The meeting was tape recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commission Members Ricky Wright and Mike Joyner.

MINUTES OF AUGUST 16, 2002 MEETING

The Chairman asked both Commission Members if they had any corrections or additions regarding the Commission Agenda for the August 16, 2002, meeting. Neither Commission Member had any corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioners Joyner and Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. The Chairman stated she found no conflicts of interest with regard to herself. Commissioners Joyner and Wright stated they had reviewed the agenda and found no conflict of interest. So Ordered.

HEARING CASES - 83 listed.

Chief Deputy Counsel Fred Gregory stated that there was one contested case to be heard. N. Leo Daughtry, counsel for the permittee, was present to speak on behalf of his client, Acme Retail, Inc., T/A Handy Pantry, case #1. Assistant Counsel Tim Morse stated that this case came before Administrative Law Judge Sammie Chess, Jr. on January 8, 2002. He further stated that ABC Officer R. Simmons of the Charlotte-Mecklenburg Police Department testified that he played a poker machine, hit the jackpot and received three coupons from the machine that contained printing describing the credits earned. One coupon showed a credit of \$1,500.00 and a value of \$75.00 printed across it, the second and third coupons each showed a credit of \$2,500.00 and a value of \$125.00 printed on each of those two. Officer Simmons asked if he could cash in the coupons and the store clerk, Jason Graham, told him that he could not pay in cash. Officer Simmons asked what he could get for the coupons and the clerk told him that he

could have anything in the store. Officer Simmons asked if he could come back later at a time to exchange the coupons for merchandise. The clerk told him that he could, just be sure to bring back the coupons. The permittee could not explain why the machine printed coupon, with values in excess of the \$10.00 limit. Mr. Morse stated that the machines were supposed to be programmed in accordance with North Carolina Law. He further stated that Administrative Law Judge Sammie Chess Jr. stated that it was up to Handy Pantry to prove they were the exception to the law. Attorney N. Leo Daughtry stated that there was a sign on the machine stating the North Carolina Law, G.S. 14-306(b)(2). Mr. Daughtry stated that his client did not know why the machine emitted more than the \$10.00 value coupons. Mr. Daughtry said that Mr. Graham's statement was hearsay and that he didn't get to talk with him. Mr. Daughtry presented the Commission with the policies of Alcohol Law Enforcement and read the following:

For a first offense: Verbal Warning

For a second offense: Written Warning

For a third offense: Option of removing machine within 48 hours or face criminal or administrative action

For a fourth offense: Take criminal action

Mr. Daughtry stated that the officer didn't follow their own policies and that he took action number four against his client. He felt that the officer didn't follow through with the investigation nor did he return to cash in his coupons or get his prizes. Commissioner Joyner asked why the officer didn't follow up and try to redeem the coupons. Mr. Daughtry stated that he didn't know why the officer didn't follow up. Mr. Daughtry again stated that ALE didn't follow their own policy and that he didn't follow up or go back and redeem his coupons. He then stated that they had been unable to locate Mr. Graham, the store clerk. The Chairman asked why the game was emitting more than \$10.00 coupons. Mr. Daughtry said that his client didn't know why and that the machine wasn't programmed that way. Mr. Morse stated that Officer Simmons is an ABC officer and not an ALE Agent, that those two offices are separate. Mr. Daughtry stated that the officer didn't complete the guilty act. Mr. Morse stated that the guilty act was in possessing the machine and the burden was not on the ABC Commission to show what the true value of the coupons were, the burden was on Handy Pantry. Mr. Daughtry stated that the value of the coupons were never found because the officer didn't come back and redeem them, so Handy Pantry met their burden of proof.

CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEY AND LEGAL STAFF

Commissioner Ricky Wright made a motion to go into closed session pursuant to G.S. 143-318.11(a)(3) for the purpose of discussing the contested case #1, Handy Pantry, with Chief Deputy Counsel Fred A. Gregory.

-- CONFIDENTIAL --

**CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEY AND LEGAL STAFF
Minutes**

Commissioner Ricky Wright made a motion to go into closed session pursuant to G.S. 143-318.11(a)(3) for the purpose of discussing the contested case #1, Handy Pantry with Chief Deputy Counsel Fred A. Gregory.

Commissioner Mike Joyner stated that he wished that they had brought the Commission solid cases and that he didn't like that he had to act like an attorney and split hairs over the definition of some specific words in order to prosecute someone. He felt that the whole ordinance was meant for people to operate poker machines and not pay off and he felt that it didn't happen. The Chairman stated that she felt that the employee's statements were admissible. She felt that it was very interesting that no one from the corporation was present at the hearing to testify and that the tickets speak for themselves. Chief Deputy Counsel Fred Gregory asked the Commission if they would be willing to look at a failure to supervise charge and \$200.00 fine. He stated that he had asked Mr. Daughtry if he would be willing to accept the failure to supervise charge and \$200.00 fine and Mr. Daughtry indicated that he would be willing. Commissioner Wright stated that he wanted to make an offer of \$500.00, no active time and failure to supervise. The Chairman stated that she wanted the permittee to stipulate that they possessed a gambling device on this date and time, whether the employee was going outside of his scope of authority or not, it was an illegal gambling device. Commissioner Wright and Joyner agreed to change the offer to failure to supervise with 30 days suspended upon payment of \$300.00. The Chairman disagreed, but went along with the other Commission members. The Commission also felt that a letter needed to go out to the ALE and local ABC offices that they need to follow through with investigations of cases in order for the Commission to prosecute.

END OF CLOSED SESSION

AFTER THE CLOSED SESSION, THE COMMISSION RETURNED TO THE REGULAR COMMISSION AGENDA TO DISCUSS HANDY PANTRY AND THE OTHER CASES AS FOLLOWS:

Commissioner Joyner made a motion to accept the offer in compromise. Seconded by Commissioner Wright. So Ordered. The Chairman stated for the record in the Handy Pantry case that she was in opposition to the offer in compromise and the vote to accept it was two to one. She also stated that the Commission would be communicating with Law Enforcement with regard to its method of enforcement. The Chairman commended Assistant Counsel Tim Morse on his presentation of this case.

The Chairman asked if it was possible for the issuance date of permits be added to the offers in compromise. Chief Deputy Counsel Fred Gregory stated that would be possible.

The Chairman had questions about the following cases:

#71 – Puckett's Farm Equipment – The Chairman stated that permittee was intoxicated and drinking. The Chairman stated that she wasn't sure if that was an adequate penalty for a permittee being intoxicated and not an employee being intoxicated. Assistant Counsel LoRita Pinnix agreed that it was a generous offer. The Commission members agreed that it was a generous offer, but agreed to accept the offer. Seconded by Commissioner Wright. So Ordered.

#58 – Fred's Kwik Shop - The Chairman stated that the permittee wrote a letter to the Commission. Assistant Counsel LoRita Pinnix stated that he had held permits since 1984. The Chairman stated that she felt that they had made a diligent effort to verify the underage person's age. The Chairman made a motion to reduce the penalty to 10 days to be suspended upon payment of \$400.00. Seconded by Commissioner Joyner. So Ordered.

Assistant Counsel LoRita Pinnix made a comment about the following case:

#52 – East Boulevard Bar and Grill – She stated that it was an underage violation and that they have held permits for 16 years without any violations. The Chairman asked how old was the underage person. Assistant Counsel LoRita Pinnix stated that at the time of the violation she was 18 years old. Commissioner Wright made a motion to reduce the penalty in half to 10 day suspension upon payment of \$400.00. Seconded by Commissioner Joyner. So Ordered.

REMAINING OFFERS IN COMPROMISE

The Chairman made a motion to accept all other offers in compromise up through and included #82 and #83. Seconded by Commissioner Joyner. So Ordered.

II. ABC Store Location- Thomasville ABC Board, Davidson County. Administrator Michael Herring presented information regarding a proposed ABC store location at 1033 Randolph Street, in the city of Thomasville. Assistant Supervisor Michael Yates with ALE District VII, conducted an investigation and found that the Thomasville ABC Board would like to open a new ABC store for the residents of the southern region of Thomasville and Davidson county. The proposed location is owned by Southgate Plaza Associates, LLC, a North Carolina limited liability company. The nearest church is four-tenths of a mile and the nearest school is one-tenth of a mile from the proposed location. The sign regarding notice of intent to open an ABC store has been posted for 30 days in accordance with ABC Commission regulations. There is no conflict of interest. There was a petition with a hundred signatures. The reason for the opposing the store was a need for higher moral standards than economical gain. Mr. Herring made a recommendation to approve the location. Mayor Herbert Leonard and Thomasville ABC Board member William B. Mills were present to speak in favor of the ABC store location. Mr. Mills presented photos to the Commission, showing other retail stores that would be located near the proposed ABC store location. Mayor Leonard stated that the current ABC store was doing extremely well and that this proposed location would benefit Thomasville greatly. The Chairman moved to approve the location. Seconded by Commissioner Wright. So Ordered.

OPEN DISCUSSION

The Chairman stated that she had a matter that she wanted to bring up in the nature of an interpretation of a statute that had been questioned by some people, with regard to the new wine tasting permit. The statute was a new permit authorized by the General Assembly last year so that off-premise businesses could conduct wine tastings. They could only serve wine in one-ounce servings. One particular business started charging a fee of \$15.00 because the business owner stated that they started getting people coming in who didn't really have a whole lot to do with their lives and were partaking of the wine tasting. The term that was used was "riff raff" and they offended the legitimate tasters. The Chairman suggested an interpretation of G.S. 18B-1001(15) to permit cover or door charges. The Commission agreed, and the Chairman stated that she would work on some language.

OTHER BUSINESS

The Chairman stated that she needed to change the March 7, 2003 Commission meeting because of scheduling conflicts. She made a motion to change the Commission date to March 14, 2003. Seconded by Commissioner Joyner. So Ordered.

No other business, new or old, was heard. The Chairman made a motion to adjourn this meeting. Seconded by Commissioner Wright. So ordered.

With no further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division